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September 15, 2004

State of Wyoming
Office of the Attorney General
123 State Capitol
Cheyenne, WY 82002
Attn: Patrick J. Crank



RE: "Instant Racing" device

On August 10, 2004, Louis A. Cella, Vice President, Oaklawn Jockey Club, conducted an instructional session and tour of the Oaklawn Jockey Club, 2705 Central Avenue, Hot Springs, Arkansas. Those present were John C. Corckran, Jr., representative of AMTOTE System; Bobby Geiger, Director of Wagering; Eric Jackson, General Manager; and Jim Hancock, Technical Advisor. Cella made a presentation of the characteristics and theory behind the design of the Instant Racing device.

Pari-mutuel Wagering System

The following is a simplified description of the pari-mutuel wagering concept. The pari-mutuel system is based upon the pooling of wagers for each type of wager, i.e. win, place, show, daily double, exotic type of wagers, etc. For example, all wagers bet to win on a particular horse, are kept in a "Pool." The AMTOTE system records these wagers as they are being placed at the track. Wagering activity is concluded when the race begins. At this point the Totalizer system calculates the total amount of wagers placed and deducts a set commission. It will then calculate what the pay-off would be for each wager placed from the balance of the wagering activity. The AMTOTE system processes this information every thirty seconds. This pay-off amount is then displayed at the track. All wagers are funneled through the AMTOTE system to a central main frame computer and the results are then sent back to the track.

Simulcast Wagering

The Simulcast system allows bettors to place wagers from a remote location on races being run at several different racetracks. These races are being broadcast live from each of the racetracks in real time. The host location for the wagering activity sends the participating race tracks their designated commission for the wagers accepted from their track. A totalizer system is used to calculate this wagering activity for each participating track.

INSTANT RACING

Instant Racing attempts to mimic the characteristics of live horse racing. This device uses video recordings of past races as the vehicle for wagering. A totalizer pari-mutuel system is administered by AMTOTE. The system contains a repository of horse races. The player can select from "Thoroughbred Mania," "Across the Board," "Wild West Willie's Lucky Draw," "Yukon Gold," "Cash Carnival," "Treasure Quests," "Cruisin For Cash," and "Instant Double." Several thousand historic horse races are stored in the system. Each race contains ten horses that the player can choose from and the race is selected randomly. When the player inserts a coin into the device, a film of a race, in digital format, is loaded into the system and the player selects the type of bet and how much to bet. When the "Start" button is pressed the race begins.

The left side of the video screen displays the type of wagers, i.e., First, Second, Third place. The top of the screen has a window where the race is displayed as it is run. Below this window a pie chart is displayed which is divided into ten sections. The pie charts are designated as representing the skill factors associated with the ability to use performance data to handicap a race. Several past-performance charts may be viewed before the selections are entered, so the players can exercise and improve their handicapping abilities. A pie chart appears on the screen for a short time which is alleged to represent a skill factor such as "Average Earnings/Race by Trainer, Lifetime," "Number of Races Won by Trainer, Same Year," "Average Winning/Race by Trainer, Same Year," etc. There are seventy elements of skill, each one is condensed into a pie chart that is made available to the player, but not all at once. This performance data was condensed into a bare chart by the staff of the Daily Racing Form and was reformatted into a pie chart by the inventor of the Instant Racing concept. A "More" button appears at the top of the window displaying the "pie" chart, which when pressed displays an additional pie chart. A player can display at least five charts during play. It is said that a guarantee exists which proves that the historic racing data in the pie chart is displayed for each horse in each race.

At the bottom of the screen is a series of ten buttons representing the ten horses in the race. Additional buttons were "Clear Selections," "Exit Menu," "Help," "Bet," "Bet Max," and "Start." To the right of the pie chart is a list of the "Current Pools" with the pay-off for each type of bet. When the "Start" button is pressed a race is displayed in the top window. The player can elect to watch the entire race or just the last furlong of the race. At the end of the race the date of the race, the track, and the name of the horse are displayed to the player. The player is not aware of the names of the horse or jockey, name of the track or the date the race ran or who won the race, until the selected race is over in an attempt to prevent a player from identifying the race and betting accordingly on the identified winner.

Betting Pools

The betting pools at racetracks are generated by the bets that are placed by the players and are maintained in separate pools for each type of bet. The Instant Racing concept attempts to follow this theory even though several devices may be placed at several remote locations. This is accomplished by eliminating betting on the same race and same horse. When two or more players activate these remote devices a different race will be displayed for each location. If each player places a Win (first place) wager the totalizer system records these wagers as if they were placed on

the same horse in the same race and are accumulated in a single win pool. At the time these wagers are placed and the bet button is pressed, the pool is frozen and the pay-off amount is displayed to the player. This pool is awarded to the first winner and not shared by other winners. This is referred to as "actual pay" because the player knows what the pay-off will be before the race is over, unlike that of an actual race.

Pie Charts

The pie charts are reported to reflect the "skill" factors used to handicap horse races. These skill factors were formulated by The Daily Racing Form in an attempt to display the handicapping data in a simplified format to entice unskilled players to use these devices. It was not clear if the player had access to all seventy pie charts during each play of the device or if increments of five pie charts, randomly selected, appear for each play of the device. These pie charts are misleading since the players are not aware which factors are used by the Daily Racing Form to show the relative merits of a horse to dictate the size of the pie chart sections. For example the pie chart labeled "Number of Races Won by Trainer, Same Year," does not indicate if all races were the same length, track condition, type of horses ran against, how many races won, etc. which may influence knowledgeable players in making their choice. The pie chart is a condensed version of these factors, which is the opinion of someone else. This would be very similar to a racetrack handicapper publishing his opinion in the track program. The player does not know the specifics upon which the handicapper based his opinion.

Winning percentages were calculated based upon players using the skill factors compiled into a pie chart format. The winning percentage over a "pure" chance selection, 1 in 10, improved to approximately 7.76 to one. This comparison seems to be faulty because a true comparison should be made within the same parameters, i.e., skilled players verses unskilled players using the pie chart information. The term pure chance is also misleading because this implies that a player picking a horse randomly made a selection without considering the horse's performance data. Since a distinction was not made in the 3.3 million plays recorded, that included skilled and unskilled players, it can be inferred that the results did not illustrate that the skill factors were a major point in improving the win ratio. The skill involved in using the pie charts came down to picking the horse that had the largest pie section, which is indicative of being the most probable winner. A player using five pie charts would merely be picking the horse that had the largest pie sections on all five charts.

A comparison with an electronic video gambling device illustrates some common factors with the Instant Racing device. On a video draw poker device a player is dealt five cards. A player must choose which of the five cards should be discarded to give the best opportunity for a winning hand. Some of these video draw poker devices will assist the player by displaying the word "Discard" under the card image for the best opportunity to win. A player does not have to take this suggestion. A player of the video draw poker device does not have to know the laws of probability of all the possible combinations when following the suggestions made by the device in order to win. This is very similar to the pie chart inasmuch as the size of the sections of the pie chart give the player an idea which horse has the best possible chance to win. In reality these pie charts could be labeled with any title and it wouldn't make a difference. The decision to bet on a particular horse is made by the size of the sections not the information it is reported to contain.

Comments

The physical appearance of the Instant Racing device was designed to resemble that of a slot machine. Since wagering at racetracks and on horses in general was losing its popularity a new method of attracting bettors was needed. A casino type atmosphere had proven to be a very attractive venue and a casino was established at the Oaklawn Jockey Club. The types of wagers also resemble those of a slot machine. The "Wild West Willie's Lucky Draw" device displays icons of horses, numbers and comic male figures that bear numbers. There are five vertical windows that resemble a five-reel slot machine format. Three small windows are located at the top right of the device where "results" of the race is displayed. Along the right side of the device is displayed the payoff for five male icons, four male icons same as the first five, four horse icons, three male icons, three horse icons and three different male icons. It is to be noted that the same icons have different numbers, i.e., horse icon #8, horse icon #7, horse icon #3, etc. The player picks three horses (Numbers) and if they line up the player would win. What is unique about this game is that the face of the device does not display any handicapping information. A window in the upper right hand corner is where the race is displayed. The player's picks are recorded in the center vertical window. There is no indication how the remaining icons are picked to arrive at a winning combination. It seems as if the appearance of these icons is based on random selection and is not influenced by the player.

Based upon the above analysis it appears as if the Instant Racing device is not a game based predominantly upon skill. It is a fact that the wagering activity on these devices is based upon a pari-mutuel concept. However that fact alone does not dictate the true nature of these devices.

The Wyoming State Gambling Statute defines "gambling" as risking any property for gain contingent in whole or in part upon lot, chance, the operation of a gambling device or happening or outcome of an event, including a sporting event, over which the person taking a risk has no control over the outcome. When the Instant Racing device is activated the player is risking something of value on the outcome of a horse race that has already occurred. The player does not know the identity of the horse, the racetrack, the name of the jockey or the date the race occurred. The application of the handicapping information by the player cannot affect the final outcome of the race, which was already predetermined. A player inserts a coin (consideration) into a device to activate an activity which is based predominantly upon chance for a prize (reward) which is equal to or greater than the initial consideration, i.e., a gambling device.

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VITA

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PREVIOUS EMPLOYMENT: Federal Bureau of Investigation

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Supervisory Special Agent

RETIRED (20 years of service)

EDUCATION:

BA Degree Economics
North Park College
Chicago, Illinois

Master of Forensic Science
George Washington University
Washington, D.C.

FIELD OF EXPERTISE:

Gambling Consultant. Forensic evaluation of clandestine business records, carnival frauds, altered cards and dice, electronic video display devices, slot machines, casino type games, and pyramid schemes.

Training. Provide in-depth instruction in the technical and investigative aspects of the aforementioned clandestine activities.

Research. Conduct research to enhance state of the art technical and investigative techniques and author informative articles to be used as training aids.

Expert Testimony. Provide expert testimony relative to forensic examinations conducted and before Legislative bodies.

EXPERIENCE: For approximately 6 years, as a Special Agent with the F.B.I., investigated violations of Federal Gambling Statutes.
For approximately 14 years assigned to the F.B.I. Laboratory, Gambling Unit, as an examiner conducting analysis of evidence submitted by local, state, and federal law enforcement agencies.
Conducted numerous schools, seminars, and conferences on gambling matters for local, state, and federal law enforcement agencies and judicial systems.

LECTURES/SEMINARS PRESENTED:

- "Gambling Technology - Bookmaking," North East Police Academy, Jacksonville University, Anasin, Alabama (2/26/79).
- "Gambling Technology," Montana University, Bozeman, Montana (11/26/79).
- "Carnival Frauds Seminar," sponsored by Chapman College, Anaheim, California (4/17-20/84).
- "Electronic Video-Display Devices," sponsored by the Pennsylvania State's Attorney General at Harrisburg, Pittsburgh, and Philadelphia (Aug., Sept., and Oct. 1984).
- "Electronic Video-Display Device Technology Seminar," F.B.I. National Academy, Quantico, Virginia (6/17/84).
- "Electronic Video-Display Devices," Western States Vice Investigator Association Conference, Anaheim, California (9/24/84).
- "Video Gambling Devices," F.B.I. National Academy Retraining Session, Gulfport, Mississippi (8/8-10/84).
- "Altered Cards & Dice Seminar," New Jersey Casino Control Commission, Atlantic City, New Jersey.
- "Video Gambling Devices Seminar," Division of Gaming Enforcement, New Jersey Casino Control Commission, Atlantic City, New Jersey (12/28-30/84).
- "Video Gambling Devices Seminar," Western Oregon State College, Police Academy, Monmouth, Oregon (3/19/85).

- "Video Gambling Devices Seminar," sponsored by the Office of the Oregon State Attorney General, Organized Crime Conference, Bend, Oregon (3/21/85).
- "Carnival Frauds Seminar," sponsored by Chapman College, Orange County, California (5/6-9/85).
- "Video Gambling Devices," Eastern States Vice Investigators Association Conference, Scranton, Pennsylvania (5/19-24/85).
- "Regulatory Problems Experienced by Law Enforcement Agencies Regarding Video Gambling Devices," sponsored by the National Association of Gambling Regulatory Agencies (NAGRA), Department of the Attorney General, Boston, Massachusetts at Denver, Colorado (6/18/86).
- "Current Trends in Illegal Gambling Activities," Seminar entitled Social and Legal Effects of Gambling on Law Enforcement, sponsored by Delaware County Police Academy, Delaware Community College, Media, Pennsylvania (9/25/86).
- "Electronic Video-Display Devices Seminar," sponsored by the Laboratory Division of the Federal Bureau of Investigation, Washington, D.C. (9/27-29/88).
- "Electronic Video-Display Device Seminar," sponsored by the Royal Canadian Mounted Police, Canadian Police College, Ottawa, Ontario, Canada, (8/29/89 thru 9/1/89).
- "Gambling Investigations Seminar," Sponsored by the Honolulu Police Department, Honolulu, Hawaii (5/20-24/91).
- "Electronic Video-Display Devices Seminar," sponsored by the Atlantic Lottery Corporation, Moncton, New Brunswick, and Department of Consumer Affairs, Halifax, Nova Scotia, Canada (9/5-10/91).
- "Video Gambling Device Seminar," sponsored by Bill Holmes & Associates, Gaming Consultants, Baltimore, Maryland (9/16/92).
- "Gambling in America: Is it Getting Out of Hand?" Speaker at this conference by The Washington Journalism Center, Washington, D.C.
- "Sports Bookmaking Seminar," sponsored by the Maui Police Department, Maui, Hawaii (10/4-9/93).
- "Video Display Devices and Sports Bookmaking" seminar sponsored by the Ontario Illegal Gaming Enforcement Unit, Orillia, Ontario, Canada (5/26-29/98)

SPECIAL PRESENTATIONS:

- Testimony before the Montana State Legislature, Judicial Ad Hoc Committee, "Video Gambling Devices," Helena, Montana (2/9/81).
- Testimony before the U.S. Senate Subcommittee on Investigations, "Video Gambling Devices," Washington, D.C. (10/1/84).
- "Video Gambling Devices," Presentation at the National Conference of States Attorney's General, Orlando, Florida (12/4/84).
- "Video Games: Concepts & Latent Influences." Paper presented at the 6th International Conference On Gambling and Risk Taking, Atlantic City, New Jersey (12/19/84).
- "Video Gambling Devices," Presentation before the National Association of Attorney Generals (NAAG), Criminal Justice Committee, Scottsdale, Arizona (2/19-21/85).
- "Effect of Video Gambling Device Laws: Foreign vs. United States." Paper presented at the 7th International Conference On Gambling and Risk Taking, Reno, Nevada (8/23-26/87).
- Testimony before the North Dakota State Legislature, Senate Political Subdivision Committee, "Legalization of Video Gambling Devices."
- "Law Enforcement and Security: How to Protect From Skimming, Cheating, Scams and Other Crimes." Presentation at the 3rd Annual National Indian Gaming Symposium sponsored by the National Indian Gaming Association (5/31/89 thru 6/1/89, Alexandria, Virginia).
- Presentation before the National Association of Gaming Regulatory Agencies (6/6-9/89, Atlantic City, New Jersey).
- "Records Don't Lie." Paper presented at the 8th International Conference On Gambling and Risk Taking, London, England (8/14-16/90).
- Consultant for the Honorable Donald Cameron, Premier, Nova Scotia, Canada re effects of VLT's on law enforcement and compulsive gambling (1/14/93).
- Panel discussion on "Crime and Gambling" sponsored by National Press Foundation (1/15/97).
- Television interview for "Fair Game," Fox 5 News, 8/31/98, re Carnival game fraud.

- "Electronic Video Devices: Historical Development and Significance of Accounting Features." Paper presented at the 11th. International Conference on Gambling and Risk Taking, Las Vegas, Nevada (6/12-15/00).

ARTICLES PUBLISHED:

- "Baseball Wagering," F.B.I. Law Enforcement Bulletin, June 1979.
- "Video Games: Concept & Latent Influences," F.B.I. Law Enforcement Bulletin, March and April, 1985.
- "Video Gambling," Training Key #369, International Association of Chiefs of Police, Gaithersburg, Maryland (1987).
- "Effect of Gambling Device Laws: Foreign vs. United States," presented at the Seventh International Conference on Gambling and Risk Taking, Reno, Nevada (8/23 - 26/87).
- "Penny Falls: Friend or Foe?," F.B.I. Law Enforcement Bulletin, Feb. 1988.
- "Records Don't Lie or The Use of Interpretative Analysis of Illegal Gambling Operations." Presented at the Eighth International Conference on Gambling and Risk Taking, London, England (8/14 - 16/90).
- "When is a Pay-off?" Presented at the Ninth International Conference on Gambling and Risk Taking, Las Vegas, Nevada (June 1994).

TESTIMONIES; Local, State and Federal Courts.

- U.S. vs. Rotchford, 575 F 2nd 166 (C.A. 8th 1978).
Recorded conversations of sports bookmaking operations (Federal Violation - Illegal Gambling Business , IGB).
- U.S. vs. Denton, 556 F 2nd 811 (C.A. 6th 1977).
Recorded conversations of sports bookmaking operations and layoff wagering. (Illegal Gambling Business - IGB).
- U.S. vs. Scavo, 539 F 2nd 837 (C.A. 8th, 1979).
Recorded conversations of sports bookmaking operation (Illegal Gambling Business - IGB).
- U.S. vs. Grezo, 566 F 2nd 854 (C.A. 2nd 1977).
Sports bookmaking operation (IGB).

- U.S. vs. Gresko, 632 F 2nd 1128 (C.A. 4th 1980).
Sports bookmaking operation (IGB).
- U.S. vs. James Robert Hawthorne, 626 F 2nd 1987 (C.A. 9th 1980).
Sports bookmaking operation (IGB).
- U.S. vs. Mario Riccobene, 709 F 2nd 214 (1983).
Physical evidence and recorded conversations of numbers and sports bookmaking, loan sharking, and Illegal Enterprise (RICO - IGB).
- U.S. vs. Balistrieri, 577 F.2d 1532 (1984).
Physical evidence and recorded conversations of sports bookmaking operation (Illegal Gambling Business - IGB).
- U.S. vs. Martin Mosko, Case No. 87-2582, July 5, 1989, Appeal, U.S. Court of Appeals for the Tenth Circuit. Physical evidence, recorded conversations, and expert testimony were challenged. AFFIRMED.

MISSOURI

- Swalley, W & S Novelty, Inc. and American Cigarette Vending Company vs. George R. Westfall (Prosecuting Attorney, St. Louis County) 682 S.W.2d 682 (1980).
Electronic Video-Display Devices.

MARYLAND

- State of Maryland vs. Marlin Dean (Charles County Circuit Court - 1984).
Electronic Video-Display Devices.
- State of Maryland vs. Donald Robert Owens (Charles County District Court - 9/18/84).
Electronic Video-Display Devices.
- Erik E. Schrader vs. State of Maryland, Court of Special Appeals (No. 240 September term, 1986 - 12/4/86).
Pyramid Promotional Scheme involving six companies.

CANADA

- Queen vs. Laniel of Canada (Municipal Court of Montreal, Canada, Doc. # 15-13022; 1/21-24/86).
Forty-seven electronic video-display devices.
- Queen vs. James J. Thompson (Municipal Court of Stellarton, Nova Scotia, Canada - 1980).
Gambling Devices.

HAWAII

- U.S. vs. Sixteen Electronic Video Gambling Devices (603 F. SUPP. 32, October 3, 1984). Electronic Video-Display Devices declared gambling devices and forfeited.

OHIO

- U.S. vs. One Hundred Thirty-Seven (137) Draw Poker-Type Machines and Six (6) Slot Machines (765 F. 2nd 147, May 1985) AFFIRMED. Unpublished opinion. (Gambling Devices Act of 1962, 15)
- State of Ohio vs. Wac (Ohio, 428 N.E. 2nd 428) State Supreme Court of Ohio AFFIRMED lower court ruling of guilty of bookmaking and operating a gambling house.

PENNSYLVANIA

- U.S. vs. 294 Various Gambling Devices (United States District Court, Western District of Pennsylvania - July 20, 1989). Declared gambling devices per se and ordered forfeited. (718 F. SUPP. 1236 - W.D. Pa. 1989)
- U.S. vs. 294 Various Gambling Devices and \$24,674.00 in United States Coins,, Civil Action No. 85-297 Erie, March 5, 1990. Balance of earlier decision ruled upon.
- U.S. vs. Mario Eufrazio, aka Murph. U.S. Court of Appeals (No. 90-1267) re RICO violations, attempted extortion, and illegal gambling, affirmed. (5/15/91)
- US vs. John F. "Duffy" Connley, ET AL U.S. District Court, Western District of Pennsylvania (Case #91-178 and 94-182) 9/95. Guilty verdict, 10 years in jail and \$1,000,000 fine for operating illegal video poker machines.

TENNESSEE

- Bill Clark vs. Jim W. Horner, Assistant District Attorney General for the 31st Judicial District (Ct. of App. of Tenn., West. Sect. - C.A. No. 6, 8/9/84). Trial Court case reversed in part and dismissed. This case established what a per se gambling device is.

TEXAS

- State of Texas vs. Gambling Device, Court of Appeals for the First District of Texas - July 8, 1993. Forfeiture Statute found to be Constitutional. (No. 590,324)

FLORIDA

- Richard F. Mancuso vs. City of Jacksonville, McMillan - U.S. District Court, Middle District of Florida - denied alleged Civil Rights violations by plaintiff. (11/2/89) (7/29/92)
- State of Florida vs. James B. Melton - Circuit Court for the Sixth Judicial Circuit of the State of Florida in and for Pinellas County (Case #CRC95-14540CFANO). Bingo game called "Quarters Up." (7/30/96)
- State of Florida vs. Laurencio Lira (SPN 01948343) - Circuit Court for the Sixth Judicial Circuit of Florida, Clearwater, Florida (Case CTC9823361MMANO). Sweepstakes devices dispensing phone-cards ruled gambling devices. (2/20/99)

AUSTRALIA

- International Game Technology vs. Licensing Division New South Wales Police Department, Sidney, Australia (4/15/88).

CITED IN ARTICLES/PUBLICATIONS:

- "Illegal Use of Video Gambling Machines," Senate, 98th Congress, 2nd Session, 10/1/84.
- "Video Gambling," The Criminal Law Reporter, 34 CRL 2367, 2/12/85.
- "Keeping Amusement Card Games From Being Outlawed," Mike Shaw, Replay Magazine, Feb. 1985, pp 96.
- "Senate Holds Hearing on Grey Area Machines," Playmeter Magazine, Dec. 1984, pp 64-67.
- "How the F.B.I. Determines Certain Types of Video Games are Gambling Devices," Ed. Howard Schwartz, Casino & Sports, Gambling Book Club, Las Vegas, Nevada, Vol. 20.
- "Gambling and the Law," I. Nelson Rose. Published by Gambling Times, Inc., Hollywood, California (1986).
- "Carnival Secrets," Mathew Gryczan, Zenith Press, Royal Oak, Mich. (1988).

PROFESSIONAL ORGANIZATIONS:

- American Academy of Forensic Sciences.
- International Association of Chiefs of Police.
- Compulsive Gambling Center, Inc.
(Member of the Board of Directors.)
- Association of Former Intelligence Officers

COURT QUALIFIED:

Qualified in Gambling Matters in excess of 260 times in local, state, and Federal courts in 33 states as well as Canada and Australia.